IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9733 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINOD J GAIKWAD

Versus

PATANJALI SHUKLA

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/07/2000

ORAL JUDGEMENT

The petitioner was running a fair price shop and was also granted licence to sell kerosene under the public distribution system. The inspection was made by the officers of the Civil Supplies Department on 28.3.1998 when certain irregularities were noticed. The petitioner was given a show cause notice for as many as eight irregularities including selling 2080 ltrs. of kerosene to persons who did not have ration cards or who

were having bogus ration cards. Similarly, the bills were issued in the name of certain card holders without making any entry in the cards and also selling 1385 ltrs. of kerosene by showing the said quantity against the names of genuine card holders, but the quantity was sold to other persons. The allegations were also to the effect that the petitioner was selling less quantity of kerosene than was being mentioned in the invoices. At the time of inspection, the petitioner admitted various irregularities. After considering the reply, the District Supply Officer held that the irregularities levelled against the petitioner were proved, but the District Supply Officer took a lenient view while passing the order dated 17.2.1999 that since the petitioner had already undergone detention under the Prevention of Black Marketing and Maintenance of Essential Commodities Order for a period of 4 months between 3.4.1998 and 5.8.1998 and, therefore, the petitioner's shop had remained closed, the petitioner was substantially punished. On that basis, the District Supply Officer merely passed the order for forfeiting the security deposit for the licence (of Rs.2500/-) and the security deposit for the fair price shop aggregating to Rs.5,000/- in all. The petitioner did not challenge the said order. Subsequently, the State Government issued the notice in exercise of its power for suo motu revision. The notice was issued on 18.6.1999. The petitioner filed his detailed reply to the notice on 9.9.1999 (Annexure "G"). After hearing the petitioner and after considering the petitioner's reply, the State Government passed the impugned order dated 26.10.1999 (Annexure "H") modifying the order of the District Supply Officer by providing that while the petitioner was permitted to continue to run the fair price shop for other essential commodities, the petitioner was not permitted to sell kerosene and the licence for selling kerosene was cancelled.

It is against the said order that the petitioner has filed this petition.

2. Mr Kapadia, learned counsel for the petitioner has submitted that the State Government could not have taken the order of the District Supply Officer in suo motu revision because under clause 12 of the Licensing Order of 1981 the order of the licensing authority or the Collector or the Food and Civil Supplies Controller, Ahmedabad City can be taken in revision. Hence, the order of the District Supply Officer could not have been taken into revision. Mr Kapadia further submits that only the Mamlatdar is the competent authority and the District Supply Officer is not the competent authority.

3. As against the above submissions, MR KT Dave, learned AGP for the respondents submits that clause 2(13) of the Licensing Order defines `licensing authority' as under :-

"2.(13) "licensing authority" means -

(a) in relation to the City of Ahmedabad as constituted under the Bombay Provincial Municipal Corporations Act, 1949, the Deputy Food and Civil Supplies Controller,

(b) in relation to any ther area, a Mamlatdar or a Mahalkari, within his respective jurisdiction, and

(c) in relation to such area as may be specified by the State Government, any other officer appointed by it, as the licensing authority in addition to the licensing authority specified in paragraphs (a) or (b)."

It is submitted that under sub-clause (c), the Government has the power to specify any other officer as a competent authority in addition to Mamlatdars. It is further submitted that in any view of the matter, the petitioner had not challenged the order passed by the District Supply Officer earlier before the State Government or even in this petition. If the District Supply Officer's authority to issue the show cause notice, to give findings against the petitioner and to impose penalty remains in force, there is no reason why the State Government cannot exercise the power of suo motu revision under clause 12 of the Licensing Order.

4. Having heard the learned counsel for the parties, it appears that the petitioner had not raised this contention before the revisional authority. If the said contention was raised before the State Government, the State Government would have dealt with the same and would have pointed out whether the District Supply Officer is covered by the definition of Licensing Authority or not. This Court is not, therefore, inclined to permit the petitioner to raise this contention at this stage.

5. The next contention urged by the learned counsel for the petitioner is that the penalty imposed by the State Government is disproportionate to the irregularities alleged against the petitioner.

The contention cannot be accepted because the District Supply Officer has given a finding of fact that the serious allegations were proved including siphoning away 2080 ltrs. of kerosene which was otherwise meant for the public distribution system. The State Government has taken a very balanced view by permitting the petitioner to run the fair price shop as there was no allegation in respect of the other commodities like food grains and only the petitioner's licence to sell kerosene has been cancelled.

6. The learned counsel for the petitioner also submitted that the defences urged by the petitioner were not considered by the District Supply Officer. This contention is misconceived. The authorities had given concurrent findings against the petitioenr and the petitioner had not challenged the same. Even otherwise, the impugned order of the State Government reveals application of mind to the issues involved in the controversy. Hence, no interference of this Court is called for in this petition under Article 226 of the Constitution.

7. In view of the above discussion, the petition is summarily dismissed. Rule is discharged.

July 19, 2000 (M.S. Shah, J.)
sundar/-